IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.205 OF 2007

Mohan Vitthal Bagade ...Applicant

Versus

Chandrakant Janardhan Modak ...Respondent

Shri S.B.Deshmukh for the Applicant.
Shri M.S.Topkar for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : JUNE 15, 2007.

P.C.:

1. Submissions of the learned Advocates appearing for the parties were heard yesterday. Revision Applicant is the tenant and the Respondent herein is the landlord. The premises subject matter of dispute are located in House Property No.59 situated at Bhavani Peth, Satara. The suit for eviction was filed by the Respondent on various grounds. First ground is default and the second ground is under section 13(1)(hhh) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the said Act of 1947). As stated earlier, a decree was sought under clause (hhh) of subsection 1 of section 13 of the said Act of 1947 by contending that the suit premises are required for immediate purpose of demolition ordered by local authority.

2. The trial Court decreed the suit filed by the Respondent. The decree was passed by the trial Court on the ground incorporated in section 13(1)(hhh). The decree has been confirmed in Appeal by the District Court.

3. The learned Advocate for the revision Applicant invited my attention to various findings recorded by the Appellate Court. He pointed out that there was no prohibition against the revision Applicant carrying out repairs to the suit premises. He pointed out that even the Appellate Court has found that now the repairs have been carried out by the revision Applicant and demolition of the building is no more required. He submitted that even the report of the court commissioner shows that the tenant has carried out repairs to the premises in dilapidated conditions. He placed reliance on the decision of the Apex Court in the case of **Shadi Singh Vs. Rakha [(1992) 3 Supreme Court Cases Page 55]** and submitted that the law laid own by the Apex Court is clearly applicable to the facts of this case. The learned Advocate for the Respondent supported the impugned judgment and decree.

4. I have considered the submissions made by the learned counsel appearing for the parties. It is not in

dispute that a notice was issued by the Municipal Council under section 195 of the Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act, 1965 (hereinafter referred to as Maharashtra Municipalities Act). A notice was issued by the local authority on 14th May, 1993 addressed to the Respondent landlord in which it is stated that the building was in dangerous condition and was unsafe for dwelling and therefore, it may collapse at any time. The notice calls upon the Respondent to pull down the building. The case of the Respondent was that the building was 100 years old. According to the case of the Respondent it was constructed in mud and bricks. The Respondent deposed regarding condition of the building which is reflected in the judgment of the trial Court. A report of inspection of the Municipal Engineer was produced and proved before the trial Court. The trial Court referred to the contents of the report. The trial Court has noted that in the report it is pointed out that construction of the building is made in mud and bricks and some of the walls are either displaced or leaned. The report discloses that wooden beams are decayed and damaged. It is stated in the report that he had inspected the building in 1990 and 1993. The Engineer of the Municipal Council was examined as a witness before the trial Court whose evidence has been

elaborately considered by the trial Court.

5. In so far as notice under section 195 of the said Act of 1965 is concerned, it is not alleged that the action of the Municipal Council of issuing the notice is malafide.

6. The contention of the revision Applicant is that during the pendency of the Appeal, repair work was carried out by the revision Applicant and now the building is no longer unsafe for occupation.

7. Reliance was placed on the decision of the Apex Court in the case of Shadi Singh (supra). The Apex Court was dealing with clause (a)(iii) of sub section 3 of section 13 of the East Punjab Urban Rent Restriction Act, 1949. The said provision incorporates the following ground of eviction:

> "In the case of any building or rented land, if he requires it to carry out any building work at the instance of the Government or local authority or any Improvement Trust under some improvement or development scheme or if it has become unsafe or unfit for human habitation".

The said clause deals with a case where at the instance of the Government or local authority the landlord is required to carry out any building work if it has become unsafe or unfit for human habitation. The Apex Court has referred to section 12 of the said Act of 1949 which refers to right given to tenant to effect necessary repairs. In the present case the contention of the revision Applicant is that there was no prohibitory order against the Applicant restraining him from carrying out the repairs. The submission is that there is no prohibition in law which prevents tenant from carrying out repairs.

8. Under sub section 1 of section 23 of the said Act of 1947 it is provided that it is the responsibility of the landlord to keep the premises in good and tenantable repair. Sub section 2 of section 23 provides that if the landlord neglects to make any repairs which he is bound to make under sub section (1), within a reasonable time after a notice of not less than 15 days is served on him by tenant, such tenant may carry out repairs. It is only when the said procedure is complied with, that the tenant can claim to have a right to carry out repairs. It is not the case of the Applicant that the requirement of sub section 2 of section 23 was

satisfied. It is not the case of the Applicant that the Respondent was called upon to carry out repairs by sending a notice. In fact, even according to the case of the Applicant the work was carried out during the pendency of the proceeding in the court. There is some dispute whether the work was carried out before or after prohibitory order was passed by the Court. However, suffice it to say that the Applicant had no right to carry out repairs.

9. This was the case where undisputedly the local authority had found that the building was in dangerous condition and was required to be pulled down. There is cogent evidence on record to that effect about the condition of the building at the time of institution of the suit. Such conduct of the Applicant of illegally carrying out repairs though he was not entitled to do so cannot defeat the statutory ground of eviction under clause (hhh) of section 13 (1) of the said Act of 1947. Considering the statutory provisions of the said Act of 1947, the decision of the Apex Court will not help the Applicant.

10. There is no reason to disturb the concurrent findings recorded by the Court below. There is no merit in the revision Application and the same is rejected.

On the request made by the Advocate for the Applicant, parties will maintain status-quo as of today in respect of the suit premises for a period of twelve weeks from today.

JUDGE